

TED CRUM

IBLA 78-447

Decided March 28, 1979

Appeal from decision of Redding District Office, Redding, California, Bureau of Land Management, rejecting grazing lease application (CA-030).

Affirmed.

1. Grazing Leases: Generally--Grazing Leases: Applications--Grazing Leases: Preference Right Applicants

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

2. Grazing Leases: Generally--Grazing Leases: Applications

A decision of the district manager rejecting a grazing lease application will not be disturbed on appeal in the absence of a showing that the decision is not reasonable or does not comport with statutory or regulatory standards, and where the decision appealed from is consonant with good range management.

APPEARANCES: Gary C. Borchard, Esq., Carlton, Borchard & Cowling, Redding, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ted Crum appeals from a decision of the Redding, California, District Office, Bureau of Land Management (BLM), dated January 26, 1978, rejecting his grazing lease application CA-030 filed pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1976), and awarding a lease of all the lands in issue to the conflicting applicants Milton E. and Virginia R. Sharpe for the stated reasons that "the preference lands now owned by the Sharpes were historically used in support of grazing public lands" and that the "public lands are under an intensive livestock management plan * * *. Division of the lands would mean dissolving the AMP. This is not consistent with current land management plans for this planning unit."

The lands for which appellant applied consist of 4,164 acres in sec. 35, T. 37 N., R. 5 E., and sec. 1, 2, 11, 12, 13, and E 1/2 14, T. 36 N., R. 5 E., Mount Diablo meridian, Shasta County, California. In his grazing lease application dated October 25, 1977, appellant listed 80 acres leased and 160 acres owned as the private lands upon which he based his preference right. Milton and Virginia Sharpe, who filed a conflicting application dated October 8, 1977, for the same 4,164 acres, based their preference right on 320 acres which they own. Sharpes' predecessors in interest to this land were Mr. and Mrs. Leslie Crane, Jr., who leased this property to Crum for the grazing of livestock and related purposes. The term of this lease commenced on April 1, 1966, and was to terminate on March 31, 1978. Crum was issued a grazing lease for 4,164 acres with the 320 acres he leased from Crane as the preference lands. The grazing lease was due to expire on April 30, 1978. Crane, however, sold the parcel to the Sharpes who informed Crum by letter of February 11, 1974, that his agreement with Crane was no longer in effect. By notice of May 6, 1977, BLM informed Crum that his grazing lease was being held for cancellation because of loss of control of the private lands used as the preference right to obtain the grazing lease. BLM allowed Crum 15 days from receipt of the notice to show cause why the lease should not be cancelled. By decision of May 23, 1977, the lease was cancelled and no appeal from that decision was filed.

In his decision, the district manager awarded the lease to the Sharpes based on the following rationale:

When more than one qualified applicant applies for the same public land, a decision will be made in accordance with 43 CFR 4121.2-1(d)(2), which states: "The authorized officer will allocate the use of the public land on the basis of any or all of the following factors: (i) historical use, (ii) proper range management and use of water by livestock, (iii) proper use of the preference lands, (iv) general needs of the applicant, (v) topography, (vi) public ingress and egress across public lands under application."

It has been decided to deny your grazing application and accept the Sharpe's [sic] because the preference lands now owned by the Sharpes were historically used in support of grazing public lands.

The primary category upon which this decision is based is "historical use." Historical use refers to the private lands that have been used in conjunction with the public lands in past years as an established grazing unit. The public lands are under an intensive livestock management plan (Allotment Management Plan - AMP). Division of the lands would mean dissolving the AMP. This is not consistent with current land management plans for this planning unit.

In his statement of reasons appellant contends that:

1. From 1964 through 1977 he and his uncle, Allen Crum, used the 320-acre parcel, the 80-acre parcel listed by appellant in his application as preference lands and the 4,164 acres as a ranching unit.
2. The 80-acre parcel has spring water on it and has been used for approximately 10 years in conjunction with the 4,164 acres and appellant's home ranch located about 1-1/2 miles north of the public lands.
3. From a historical standpoint, appellant asserts that the preference lands listed in his application should be entitled to equal standing with the 320-acre parcel listed by the Sharpes.
4. The Sharpes' preference lands are not being properly used in that they have fenced and separated the 320-acre parcel so that it is no longer part of the 4,164 acres of public land. They have divided the parcel into four smaller parcels and have listed them with a local real estate agent. The Allotment Management Plan has been divided by the Sharpes due to their fencing and division.
5. By reason of fencing and division, the Sharpes are not in the business of raising cattle and are therefore not qualified applicants.
6. Crane sold the 320-acre parcel to the Sharpes without notice to appellant.

At the outset, we note that appellant listed his home ranch, SE 1/4 sec. 30, T. 37 N., R. 6 E., Mount Diablo meridian, which is not contiguous to the area in dispute, as private lands upon which he based his preference right in his application. 43 CFR 4121.2-1(c) establishes the order for issuing grazing leases as follows:

(c) Applicants. Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. * * *

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

Since appellant's home ranch lands are not contiguous to the public lands, the preference lands in question are narrowed to the 320 acres owned by the Sharpes and the 80 acres leased by appellant.

[1, 2] 43 CFR 4121.2-1(d)(2), the Departmental regulation dealing with conflicting applications, provides:

The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application [footnote omitted] (where access is not presently available), and (vii) other land use requirements. 1/ [Emphasis added.]

It seems obvious that both in terms of commensurability and tenure, the Sharpes have a more solid basis for a sustained grazing operation, envisaged by the Taylor Grazing Act. BLM properly weighed the historical use factor 2/ in favor of the Sharpes who own the preference lands which have been used in the past in connection with the lease. John Rattray, 36 IBLA 282, 287-292 (1978). 43 CFR 4121.2-1(d)(2). Further, division of the lands in question would not be in the interest of sound range management. As stated in the decision below, "[t]he public lands are under an intensive livestock management plan (Allotment Management Plan - AMP). Division of the lands

1/ Historical use is also listed as a factor to be considered under the new regulation, 43 CFR 4110.5(a), 43 FR 29070 (July 5, 1978).

2/ The conclusion reached in this case is not dissonant with 43 U.S.C. § 1752(c) (1976), and 43 CFR 4130.2(e), which in certain circumstances mandate first priority for grazing privileges to holders of expiring privileges of that kind. In the case at bar, the decision of May 23, 1977, cut off Crum's privileges.

would mean dissolving the AMP. This is not consistent with current land management plans for this planning unit."

Moreover, we note that the standard of review for section 3 grazing privileges (the instant applications are under section 15) is as follows, set forth in 43 CFR 4.478: "No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this title." Since section 402 of the Federal Land Policy and Management Act, 43 U.S.C. § 1752 (1976), virtually creates a commonality between grazing privileges in organized grazing districts and grazing leases, it is appropriate to apply the standard of review in 43 CFR 4.478 to our review of grazing lease decisions. Our review of the record impels us to the view that the decision below is reasonable and represents substantial compliance with the grazing regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

